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The Institute's mission is to help resolve the many special legislative, regulatory and tax issues confronting **internationally headquartered** financial institutions that engage in banking, securities and/or insurance activities in the United States.

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INSTITUTE SEEKS TO LIMIT EXTRATERRITORIAL REACH OF PROPOSED OTC DERIVATIVES LEGISLATION

The Institute has been engaged in ongoing discussions with the Treasury Department, Federal Reserve and senior staff of the House and Senate banking committees regarding the Obama Administration's financial regulatory reform proposals. The discussions have focused in particular on our concerns regarding the unprecedented extraterritorial application of proposed OTC derivatives legislation to internationally headquartered financial institutions and the implications of the proposal's enhanced capital standards, including limits on leverage, for international banks and top-tier parent entities.

The Institute has suggested several ways to limit the extraterritorial reach of the proposed OTC derivatives legislation. The discussion draft of an OTC derivatives bill recently circulated by House Financial Services Committee Chairman Barney Frank accommodates several of the key concerns the Institute has raised but does not include all of what we have suggested. Significantly, and in contrast to the Administration's proposal, the discussion draft includes provisions calling for consultation and coordination with foreign regulatory authorities to establish effective and consistent international standards with respect to the regulation of swaps as well as the exemption of foreign financial institutions that are found to be subject to comparable regulation in their home country.

The Institute has also held meetings and follow-up discussions with the Treasury and Federal Reserve regarding the implications of the proposed capital standards, both those that would apply to institutions determined by the Federal Reserve to be so-called "Tier 1" (systemically significant) financial holding companies (FHCs) and those that would apply to non-systemically significant institutions. We noted that applying U.S.-based capital standards to top-tier parent entities would be a dramatic departure from current Federal Reserve practice, including under the Gramm-Leach-Bliley Act (GLBA) and could potentially conflict with home country approaches to bank capital regulation. This would especially be the case for international banks whose only U.S. banking operations are conducted through U.S. bank subsidiaries and for international banks with parent holding companies that do not themselves engage directly in banking activities in the United States. Such a result would be highly disruptive for such institutions.

In our discussions with Treasury and the Federal Reserve, the Institute has urged that any new capital standards for top-tier parent entities be implemented only in tandem with the development of new Basel standards for systemically significant banking organizations that would apply at such a level, as would be consistent with the support expressed by the Administration for coordinated standards among global regulators. Similarly, we have urged that leverage standards not be applied to international bank Tier 1 FHCs except in accordance with any coordinated Basel standard that may be adopted, particularly since international banks have not been subject to or managed to any such standard, as has been long recognized in the GLBA FHC process for international banks.

Institute memoranda and related documents on financial regulatory reform are available at http://www.iib.org/displaycommon.cfm?an=1&subarticlenbr=173 .

INSTITUTE LETTER TO FDIC RAISES CONCERNS OVER AMENDMENTS AFFECTING UNINSURED BRANCHES OF INTERNATIONAL BANKS

The Institute submitted a letter dated September 25th to FDIC Chairman Bair expressing our concerns with recent amendments to Part 347 of the FDIC's regulations that were adopted in response to the temporary increase in the standard maximum deposit insurance amount (SMDIA). The result of the amendments is to increase from $100,000 to $250,000 the threshold for determining whether an uninsured branch of an international bank is engaged in "domestic retail deposit activities requiring deposit insurance protection" under Section 6 of the International Banking Act.

The amendments, effective October 19th, were adopted without notice and comment on the grounds that they are merely "technical, conforming amendments" required by the increase in the SMDIA. The Institute's letter (i) expresses our concerns regarding the absence of the opportunity for comment, especially given the potential adverse impact the amendments may have on banks' funding and liquidity planning; (ii) explains our view that there is no definitive connection between the retail deposit threshold under Section 6 and the SMDIA; (iii) articulates why, as a matter of both statutory construction and policy, there is otherwise no need to change the threshold; and (iv) raises questions regarding the impact the amendments will have on the compliance obligations of uninsured U.S. branches under Section 6.

The Institute plans to have follow-up discussions with the FDIC on this issue.

Link to the Institute letter to FDIC Chairman Bair:
http://www.iib.org/associations/6316/files/20090925FinalFDICLetter.pdf

INSITUTE COMMENTS ON LIQUIDITY RISK MANAGEMENT GUIDANCE

The Institute filed a comment letter dated September 3rd on proposed interagency guidance on funding and liquidity risk management (see link below). The letter requests clarification of how the guidance is intended to apply to the operations of internationally headquartered institutions that conduct banking activities in the United States through branches/agencies and/or U.S. depository institution subsidiaries and recommends that branches/agencies not be treated as "stand alone" entities for these purposes. In addition, the letter emphasizes the importance of consultation and coordination among home and host country supervisory authorities, and requests that such considerations be more explicitly incorporated into the guidance. Finally, the letter requests clarification of supervisory expectations with respect to the testing of contingency funding plans.

Link to Institute's comment letter:
http://www.iib.org/associations/6316/files/20090903FinalLiquidityComments.pdf

INSTITUTE MEETS WITH EC, EMBASSY REPRESENTATIVES IN WASHINGTON AND CONTINUTES DISCUSSIONS WITH TREASURY DEPARTMENT ON PARITY OF TREATMENT OF INTERNATIONAL BANKS UNDER SECTION 382 LOSS LIMITATION TAX RULES

The Institute held a meeting/conference call in mid-September with representatives from the European Commission and European embassy officials in Washington requesting their continued support in respect of our request that the U.S. Treasury Department extend the benefits of certain IRS Notices (2008-100 and 2009-38) to internationally headquartered financial institutions that received financial stabilization investments from their home country governments. Under these Notices, the acquisition of shares, convertible securities and warrants of U.S. banks by the Treasury Department in response to the credit crisis would in

effect be disregarded in determining whether the bank has undergone an ownership change that would trigger the Section 382 limitation on its ability to utilize net operating losses and other tax attributes.

Following the September meeting/conference call with the EC and embassy representatives, the Institute held a conference call with newly appointed senior tax officials from the Treasury Department (Deputy Secretary for International Tax Policy Stephen Shay and Tax Legislative Counsel Joshua Odintz) to further discuss the Treasury's position on Section 382. During this call, the Treasury expressed its understanding of the issue and its implications for the international banking community, and indicated that it would be considering the issue in light of various technical, policy and political considerations.

It is very important for European governments to continue to express concern to Treasury on this issue, and we note the extremely helpful letter EC Commissioner McCreevy sent to Secretary Geithner in advance of the G-20 summit meeting in Pittsburgh. It likewise is important for Congress to indicate that it is amenable to Treasury's granting the requested relief. Thus, as previously reported, the Institute sent letters to the leadership and certain members of the Senate Finance Committee and House Ways & Means Committee, urging them to take a favorable position on the issue and communicate their views to Secretary Geithner. In addition, the Institute sent letters to the Finance Ministers of major European countries requesting them to urge the Treasury Department during the G-20 summit to grant the U.S. operations of internationally headquartered financial institutions tax relief comparable to that which was granted to U.S. financial institutions.

IIB memoranda and related documents on the Section 382 tax issue are available on our website at http://www.iib.org/displaycommon.cfm?an=1&subarticlenbr=161 .

INSTITUTE FORMS WORKING GROUP ON NEW YORK STATE TAX DEPARTMENT'S CORPORATE TAX REFORM INITIATIVE

An Institute working group of member institutions had a constructive meeting/conference call in mid-September with the New York State Tax Department in connection with the Department's corporate tax reform proposals contained in its July 13th "white paper". We are grateful for the *pro bono* assistance of Jeff Gotlinger of Ernst & Young in preparing a list of discussion points that we provided to the Tax Department ahead of our meeting, seeking clarification of certain aspects of the tax reform proposals that are of particular importance to internationally headquartered financial institutions operating in New York, including the need for conformity with U.S. tax treaties with other countries. Additional information on this issue is available on the Institute's website at http://www.iib.org/displaycommon.cfm?an=1&subarticlenbr=192 .

Given the tremendous impact that the proposed tax changes would have on internationally headquartered banks, we encourage other interested member institutions to contact the Institute about joining the working group and participating in our internal deliberations and the further discussions that we will be having with the Tax Department and others in Albany as the tax reform initiative moves forward.

IRS FINALIZES DEDUCTIBLE INTEREST EXPENSE REGULATIONS

On September 25th, the Internal Revenue Service finalized Temporary Regulation Section 1.882-5, dealing with the calculation of an international bank's interest expense, which was issued in August 2006 and expired on August 15, 2009. The effective date of the final regulation is August 15, 2009, so there should be no gap in coverage. The final regulation maintains without substantive changes the favorable

rules introduced by the Temporary Regulation in response to the Institute's efforts, including the 95% fixed ratio and the ability to use 30-day LIBOR to calculate interest on excess US-connected liabilities. In addition, the Preamble to the regulation summarizes the comments made by the Institute regarding a number of other important issues under regulation section 1.882-5 and indicates that the Treasury Department and the IRS are considering those issues in the context of related areas. We expect to continue our dialogue with the Treasury Department and the IRS regarding those issues. Institute memoranda and related documents on the Section 382 tax issue are available on the IIB website at http://www.iib.org/displaycommon.cfm?an=1&subarticlenbr=24

CONGRESSIONAL TAX COMMMITTEES CONSIDER CONCERNS RAISED BY THE INSTITUTE AND OTHERS REGARDING THE OBAMA ADMINISTRATION'S PROPOSED CHANGES TO THE QUALIFIED INTERMEDIARY (QI) PROGRAM AND WITHHOLDING TAX RULES

As previously reported, in May 2009, the Obama Administration proposed changes that would increase the reporting burden of QIs and impose withholding tax on certain payments to non-QIs. These proposals were issued against the backdrop of a strong perception in Washington that there were serious lapses in compliance with, and gaps in, the U.S. information reporting and withholding tax rules, as reflected in a number of Congressional investigations and reports as well as in the UBS and the Lichtenstein Global Trust Group (LGT) matters.

The key proposals made by the Obama Administration include:

- QIs would be required to identify all of their account holders that are U.S. persons, and would be required to file Form 1099s on the same basis as U.S. payors reporting all "reportable payments" – including non-U.S. source income – received on behalf of U.S. account holders.

- Commonly-controlled foreign financial institutions of QIs must either meet certain reporting obligations or also be QIs.

- QIs would be required to collect information on the ultimate beneficial owners of account holders that are foreign entities (such as corporations and trusts; current law already requires this in respect of partnerships), subject to certain exceptions.

- Subject to certain exceptions, U.S. source interest, dividends, etc. paid to a non-QI would be subject to a 30% withholding tax. Foreign persons subject to over-withholding would be able to apply for a refund.

- Subject to certain exceptions, a 20% withholding tax would be imposed on gross proceeds paid to non-QIs located in a jurisdiction with which the United States does not have a comprehensive income tax treaty that includes a satisfactory exchange of information program. Foreign persons subject to over-withholding would be permitted to apply for a refund.

- U.S. financial intermediaries and QIs would be required to report transfers of more than $10,000 to or from a foreign bank, brokerage or other account on behalf of a U.S. person (or an entity in which a U.S. person owns, actually or constructively, more than 50%), as well as openings of any such accounts and the formation or acquisition of a foreign entity on behalf of such persons, subject to certain exceptions.

- Enhanced tax return disclosure would apply with respect to transfers to, and existence of, foreign accounts (including FBAR filings).

The Institute has held extensive discussions with the staffs of the Congressional tax-writing committees (the House Ways and Means Committee, Senate Finance Committee and Joint Committee on Taxation (JCT)) as well as Treasury Department and IRS officials to express concern regarding the costs and burdens that these proposals would place on QIs and the potential disruptions on capital flows into the United States, as well as to explore more workable approaches to improving the U.S. information reporting and withholding system. We understand that other interested parties have reinforced many of the points raised by the Institute in their discussions with Congressional staffers and tax officials, and that the government officials are seriously considering modifications to the proposals. The Institute plans to work closely with the European Banking Federation and others in addressing these concerns as legislation makes its way through Congress.

On September 14, the Joint Committee on Taxation staff released a lengthy report analyzing the Obama Administration's proposals. The report suggests that the Congressional tax committees are carefully considering the concerns expressed by the Institute and others in endeavoring to craft a set of rules that strikes a balance between addressing problems in the existing system and unduly burdening financial institutions and the capital markets. The following noteworthy points were made in the JCT report:

- Implementation of new rules would require a long transition period of at least one or two years.

- A simplified reporting regime could be considered as an alternative to imposing 1099 reporting requirements with respect to non-U.S. source payments made to U.S. account holders, based on the annual statements typically provided to customers.

- A broad-based multi-lateral approach is worthy of consideration, especially with respect to obtaining information regarding ultimate beneficial ownership of entities under know-your-customer (KYC) standards, but this will take a long time to develop and implement; thus, the Administration's unilateral proposals could serve as a model and provide an interim solution.

- Extension of QI-type reporting standards to affiliates of QIs might best be addressed by the IRS on a case-by-case basis, as appropriate.

- The proposed rules affecting non-QIs are intended to provide strong incentives for financial institutions to become (or remain) QIs and for foreign investors to maintain accounts with QIs rather than non-QIs, but they raise issues with respect to the efficient operation of the U.S. capital markets and the ability of the IRS to administer withholding and refund procedures on the scale contemplated by the proposals.

- The proposals regarding reporting of money transfers may deter evasion, but it may be questioned whether they represent an effective and efficient approach. Similarly, the other enhanced reporting proposals may be duplicative and overly burdensome, and may unintentionally reach large classes of taxpayers who pose relatively little risk of tax evasion.

FBAR FILING EXTENSION GRANTED TO CERTAIN FILERS AND FURTHER GUIDANCE EXPECTED BEFORE NEXT YEAR'S DEADLINE

In response to submissions from the Institute and others, the IRS issued Notice 2009-62 extending the filing deadline for the annual Report of Foreign Bank and Financial Accounts (FBARs) to June 30, 2010 for persons with signatory authority over but no financial interest in a foreign financial account, and persons with a financial interest in or signature authority over a foreign commingled fund. We understand the extension was granted in order to provide the IRS additional time to consider the exemptions recommended in submissions by the Institute and others.

Link to the Institute's submission:
http://www.iib.org/associations/6316/files/20090730FBARCommentLetter_Final.pdf

Link to IRS Notice 2009-62:
http://www.irs.gov/pub/irs-drop/n-09-62.pdf

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